

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0311
Individual Income Tax
For the Periods 2003-2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Individual Income Tax

Authority: IC § 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the assessment of individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual. Taxpayer filed individual income tax returns for 2003 and 2004. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not report all receipts subject to tax and, for 2004, disallowed a second deduction for labor expenses previously deducted on his income tax return. The Department assessed additional tax, interest, and penalty. Taxpayer protested the assessment. The Department conducted an administrative hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

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DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC § 6-8.1-5-1(b) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer. . . ." 45 IAC 15-5-3(b).

Taxpayer does not dispute the additional receipts in the Department's audit. However, Taxpayer claims that he had additional expenses that he did not originally claim on his income tax returns. Taxpayer has provided a revised Schedule C claiming additional expenses for the tax years. While the information standing alone does not substantiate Taxpayer's argument, the additional information is sufficient to sustain Taxpayer's protest subject to audit review to determine Taxpayer's correct adjusted gross income.

FINDING

Taxpayers' protest is sustained subject to audit review.

JR/BK/DK—July 16, 2007